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REMARKS

Claims 15-20 and 22-25 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for the reasons noted in the official action. The rejected claims are accordingly amended, by the above claim amendments, and the presently pending claims are now believed to particularly point out and distinctly claim the subject matter regarded as the invention, thereby overcoming all of the raised § 112, second paragraph, rejections. The entered claim amendments are directed solely at overcoming the raised indefiniteness rejection(s) and are not directed at distinguishing the present invention from the art of record in this case.

Claims 15-17 and 19-24 are rejected, under 35 U.S.C. § 102(b), as being anticipated by Blier '057 (U.S. Patent No. 4,371,057). The Applicant acknowledges and respectfully traverses the raised anticipatory rejection in view of the following remarks.

Blier '057 relates to a telescopic scaffold unit 10 which provides an openwork central section with telescopic legs 12 at both ends. The scaffold unit 10 is intended to support a horizontal working platform 40 regardless of the height of the floor under each leg 12. Figure 4 of Blier '057 teaches the scaffold unit 10 being used on stairs. In this figure, the legs 12" are supported on a step that is higher the surface on which the legs 12' are supported. As such, when the scaffold unit 10 is used on stairs one set of legs, in this case legs 12", completely pass through the sleeves 14 and extend well above the horizontal support member 23 and the supporting board 40. This arrangement of the scaffold unit according to Blier '057 prevents full access to work surfaces adjacent the side of the scaffold unit and inhibits, at that end of the scaffold unit, free passage on/off the scaffold unit. Although Figure 4 of Blier '057 shows that the scaffold unit is being used on stairs, Figure 4 does not show that the scaffold unit is used in conjunction with an on opening in a second story floor of a dwelling under construction as discussed in the application. The constructional unit of the application is to be used in an opening of a dwelling under construction, such that a person can walk on the unit across the

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hole while at the same time, because of the central opening and the closure member 40 formed as a folding lattice, a person is able to see through the construction unit, fold the closure member 40 and pass through the central opening, if it is perceived as being safe to do so.

In further distinction from the claims of the application, Blier '057 teaches that the telescopic unit 10 has telescoping transverse support members 32, 33 each with two elongate bars 32', 32"; 33', 33", which are interconnectable by way of fasteners 34. In this manner "the length of the support members 32 and 33 may be varied" (col. 3, Ins. 32-35). This is in direct opposition to the claims which state that the base members are of *fixed* width.

It is seen in Figures 1 and 2 of Blier '057 that the legs 12 are able to be adjusted so as to be at an angle relative to one another. With this ability, for reasons of stability the scaffold unit 10 has *two* transverse support members 32, 33 which extend between the legs 12. The need of *two* transverse support members 32, 33 add additional weight and cost to the scaffold unit 10 and increase the amount of time needed to set up the scaffold unit 10. The extra transverse support member is not required with the design of the claimed construction unit.

Testu '075 teaches telescoping legs 12, 13 which slide within a sleeve member 14 such that the height of the of the legs 12, 13 can be adjusted. These legs 12, 13 and the sleeves 14 are *rigidly* secured to the respective support members 21 and side supports 24 at the very ends thereof, as best seen in Figures 1, 4. They are also secured to the support members 32. The claims of the application are distinct from the teachings of Testu '075 as the claims of the application include the limitations that the telescoping props are *pivotably* fixed to a respective one of the side arms at a point on the side arms that is *spaced from* the base frame.

Claims 18 and 25 are rejected, under 35 U.S.C. § 103(a), as being unpatentable over Blier '057 in view of Testu '075 (FR 2,663,075). The Applicant acknowledges and respectfully traverses the raised obviousness rejection in view of the above amendments and the following remarks.

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The Applicant acknowledges that the additional references of Testu `075 may arguably relate to the features indicated by the Examiner in the official action. Nevertheless, the Applicant respectfully submits that the combination of the base reference of with this additional art of still fails to in any way teach, suggest, disclose or remotely hint at the above distinguishing features of the presently claimed invention. As such, all of the raised rejections should be withdrawn at this time in view of the above amendments and remarks.

In order to emphasize the above noted distinctions between the presently claimed invention and the applied art, the independent claims 15 and 22 of this application now recite the feature of "a base frame of fixed width". While independent claim 21 of this application now recites the features of "the first and the second members comprises a base frame of fixed length . . . the second member having a pair of spaced apart adjustable props which are pivotably attached to the side arms of the second member at a location along the side arms that is spaced from the base frame of the second member . . . a brace is pivotably fixed to a respective one of the side arms of the second member and releasably securable to a respective one of the adjustable props" such features are believed to clearly and patentably distinguish the presently claimed invention from all of the art of record, including the applied art.

If any further amendment to this application is believed necessary to advance prosecution and place this case in allowable form, the Examiner is courteously solicited to contact the undersigned representative of the Applicant to discuss the same.

In view of the above amendments and remarks, it is respectfully submitted that all of the raised rejections should be withdrawn at this time. If the Examiner disagrees with the Applicant's view concerning the withdrawal of the outstanding rejections or applicability of the Blier `057 and /or Testu `075 references, the Applicant respectfully requests the Examiner to indicate the specific passage or passages, or the drawing or drawings, which contain the necessary teaching, suggestion and/or disclosure required by case law. As such teaching,

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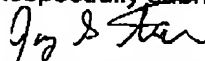
suggestion and/or disclosure is not present in the applied references, the raised rejection should be withdrawn at this time. Alternatively, if the Examiner is relying on his/her expertise in this field, the Applicant respectfully requests the Examiner to enter an affidavit substantiating the Examiner's position so that suitable contradictory evidence can be entered in this case by the Applicant.

In view of the foregoing, it is respectfully submitted that the raised rejection(s) should be withdrawn and this application is now placed in a condition for allowance. Action to that end, in the form of an early Notice of Allowance, is courteously solicited by the Applicant at this time.

The Applicant respectfully requests that any outstanding objection(s) or requirement(s), as to the form of this application, be held in abeyance until allowable subject matter is indicated for this case.

In the event that there are any fee deficiencies or additional fees are payable, please charge the same or credit any overpayment to our Deposit Account (Account No. 04-0213).

Respectfully submitted,



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